IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 26TH JUNE 2007 / 5TH ASHADHA 1929

WP(C).No. 19830 of 2004(I)

PETITIONER:

SMT.LINI K., ASSISTANT TEACHER,
CHERUMAVILAYI U.P.SCHOOL, RESIDING AT 'KARUNA'
PERLASSERY POST MUNDALORE, KANNUR 670 622.

BY ADV. SRI.M.CHATHUKUTTY NAMBIAR
SRI.RAJAKRISHNAN. K

RESPONDENTS:

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1. THE MANAGER, CHERUMAVILAYI U.P.SCHOOL,
KANNUR DISTRICT.

2. THE ASSISTANT EDUCATIONAL OFFICER,
KANNUR SOUTH.

3. THE DISTRICT EDUCATIONAL OFFICER,
KANNUR.

4. THE DIRECTOR OF PUBLIC INSTRUCTION,
STATE OF KERALA, THIRUVANANTHAPURAM.

5. THE STATE OF KERALA, REPRESENTED BY
ITS SECRETARY TO GOVERNMENT GENERAL EDUCATION
DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

BY GOVT PLEADER SMT.SMITHA BABU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETIITONER'S EXHIBITS:

EXT.P1: PHOTOSTAT COPY OF THE APPOINTMENT ORDER OF THE PETITIONER DATED 10.6.2002 ISSUED BY THE 1ST RESPONDENT.

EXT.P2: PHOTOSTAT COPY OF THE APPOINTMENT ORDER OF SMT.NISHA DATD 25.6.1999.

EXT.P3: PHOTOSTAT COPY OF THE REJECTION ORDER PASSED BY THE ASSISTANT EDUCATIONAL OFFICER, KANNUR SOUTH, BY NO.K.DIS.E8848/02 DATD 31.3.2003.

EXT.P4: PHOTOSTAT COPY OF THE APPEAL FILED BY THE 1ST RESPONDENT BEFORE THE 3RD RESPONDENT DATED 11.2.2003.

EXT.P5: PHOTOSTAT COPY OF THE ORDER PASSED BY THE 3RD RESPONDENT BY NO.B6/1504/2003/K.DIS DATED 31.3.2003.

EXT.P6: PHOTOSTAT COPY OF THE REJECTION ORDER OF THE 4TH RESPONDENT BY NO.G4/69934/2003/DPI DATED 1.10.2003.

EXT.P7: PHOTOSTAT COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 5TH RESPONDENT DATED 29.10.2003.

EXT.P8: PHOTOSTAT COPY OF THE ORDER OF THE 5TH RESPONDENT REJECTING THE REPRESENTATION BY NO.3352/P3/04/G.ED DATED 31.1.2004.

/TRUE COPY/

THOTTATHIL B.RADHAKRISHNAN, J.

W.P(C).No.19830 OF 2004

Dated this the 26th day of June, 2007

JUDGMENT

The short issue that arises for decision is as to whether the appointment of the petitioner on 10.6.2002, as per Ext.P1, as against a leave vacancy owing to the Maternity Leave of Smt.Nisha N.B., the appointee under Ext.P2 order, is an appointment as L.P.S.A or as U.P.S.A. Resolution of this issue is necessary because if the petitioner's appointment is against a vacancy of L.P.S.A, she was admittedly unqualified to be so appointed on the date of Ext.P1 order and therefore, her such appointment was not entitled to be approved. But, if in the contrary, Smt.Nisha N.B. was identifiable as a U.P.S.A on the date on which she had proceeded on ML, the vacancy was of a U.P.S.A and the appointment of the petitioner has to be treated as that of a U.P.S.A and entitled to be approved.

2. While Ext.P1 shows that the petitioner was appointed as Assistant Teacher (leave substitute) in the vacancy of Smt.Nisha

N.B., Assistant Teacher in the U.P. School and Ext.P2 shows that Smt.Nisha N.B. was appointed as an Assistant Teacher in the U.P. School, there is no material which is relatable to hold that Smt.Nisha N.B. was appointed as an L.P.S.A or that she was reckoned as an L.P.S.A in the staff fixation that preceded her proceeding of ML.

3. Ext.P3 order of the AEO proceeds as if the appointment of the petitioner is as an L.P.S.A. This appears to be on the assumption that Smt.Nisha N.B. was an L.P.S.A. Ext.P4 is the representation of the Manager to the DEO wherein, the Manager states that there are 11 divisions in the school, of which, 4 classes are in the L.P. section and the remaining in the U.P. section and that there are sufficient T.T.C. holders in terms of the KER for the L.P. section and therefore, Smt.Nisha N.B., a B.Ed. holder who proceeded on ML, is to be identified in the U.P. section and not in the L.P. section and that therefore, the

appointment of the petitioner, in the ML vacancy of Smt.Nisha N.B., is an appointment to be regularised.

4. In spite of such facts and figures being quoted in Ext.P4, the DEO passed Ext.P5 order stating that the matter has been examined in detail in consultation with the AEO and with reference to the rules in KER. However, no relevant fact is referred to in Ext.P5. Nor is any relevant rule particularly pointed out. The DEO speaks of the spirit of the Government Orders mentioned in that order, but how far G.O.(P) No.188/00/GE. dated 8.6.2000 stands flouted, at least in its spirit, is not a matter reflected in Ext.P5 order. The Manager's revision to the DPI was also rejected without considering the crucial question as to whether Smt.Nisha N.B. is to be treated as an L.P.S.A or a U.P.S.A. Same is the quality of dismissal of the revision by the Government, as per Ext.P8 order, in spite of facts and figures being quoted in Ext.P7, by the petitioner.

5. As already noticed, the authorities were duty bound to decide, at the first instance, as to whether Smt.Nisha N.B. is to be treated as an L.P.S.A or a U.P.S.A, while she entered on ML, going by the required teacher strength viz-a-viz the pupil strength in the U.P. school which has an L.P. section. Chapter XXIII of KER contains the statutory rules. Without determining the status of Smt.Nisha N.B., whether as an L.P.S.A or U.P.S.A, it was improper to finally conclude as to whether the petitioner was appointed in a vacancy of L.P.S.A or U.P.S.A.

6. Having regard to what is aforesaid, the impugned orders are quashed and it is directed that the AEO will take up the question of approval of the petitioner's appointment as per Ext.P1 and consider the issue de novo and make specific reference to the facts stated by the Manager, by Ext.P4, which was reiterated by the petitioner in Ext.P7. A final decision in this regard shall be rendered, after affording the petitioner and the Manager, opportunity of being heard, and such decision shall be

communicated to the petitioner within a period of three months from the date of receipt of a copy of this judgment. .

The writ petition is allowed as above. No costs.

Sd/-

THOTTATHIL B.RADHAKRISHNAN
Judge

kkb.